

901 N. 5th STREET  
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

CARGILL, INC.

Respondent

Proceedings under  
Section 309(g)  
of the Clean Water Act,  
33 U.S.C. § 1319(g)

## CONSENT AGREEMENT AND FINAL ORDER

Docket No. CWA-07-2002-0093

## CONSENT AGREEMENT

1. This proceeding is initiated pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") under Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and 40 CFR §22.13(b). The Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA Region VII, is the Director of Region VII's Water, Wetlands, and Pesticides Division. The Respondent is Cargill, Inc.

2. Complainant alleges that, in violation of Section 301 of the CWA, 33 U.S.C. § 1311, on February 2, 2000, June 16th through June, 19th, 2000, June 29 through June 30, 2000, July 1st through July 31st, 2000 and August 1st through August 12th, 2000, in the State of Missouri, Respondent discharged, without a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES), caused to be discharged, without an NPDES permit, and aided in the discharge, without an NPDES permit, of hog waste, a pollutant, as defined in Title 33, United States Code, Section 1362(6), from holding cells and pipes, a point source, as defined in Title 33, United States Code, Section 1362(14 ), into the Loutre River, a tributary of the Missouri River and a navigable water of the United States, as defined in Title 33, United States Code, Section 1362(7).

3. This Consent Agreement constitutes a settlement by EPA of all claims for civil penalties for allegations set forth in Paragraph 2 above.

4. Based on Respondent's violation of Section 301 of the CWA, 33 U.S.C. § 1311, as alleged above, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Complainant proposes that the Regional Administrator issue a final Order assessing administrative penalties to the Respondent in the amount of \$125,000.

5. Respondent admits the jurisdictional allegations of this Consent Agreement and Final Order.

6. Respondent neither admits nor denies the specific factual allegations contained in the Consent Agreement regarding its actions or failures to act.

7. Respondent consents to the assessment of the stated civil penalty in the Final Order, and to the conditions specified in this Consent Agreement.

8. Respondent waives any right to contest the allegations and its right to appeal the Final Order accompanying this Consent Agreement.

9. Respondent agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

10. Respondent and EPA each agree to bear its own costs and attorney's fees.

11. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

12. The undersigned representatives of Respondent certifies that they are fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

13. The settlement pursuant to this Consent Agreement shall only resolve Respondent's liability for Federal civil penalties for the allegations set forth in Paragraph 2 above.

#### FINAL ORDER

14. IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), IT IS ORDERED that Respondents shall pay a civil penalty of One Hundred Twenty Five Thousand Dollars (\$125,000). Said penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this Final Order. Payments made by Respondent shall identify the Respondent by name and

docket number and shall be made by certified or cashier's check payable to the United States Treasury and remitted to:

Mellon Bank  
EPA - Region 7  
Regional Hearing Clerk  
P.O. Box 360748M  
Pittsburgh, PA 15251

A copy of the transmittal letter and check shall be mailed to Raymond C. Bosch, U.S. EPA Region VII, 901 N. 5th Street, Kansas City, Kansas 66101. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

#### PARTIES BOUND

15. This Final Order shall apply to and be binding upon Respondent, its agents, successors and assigns. Respondent shall ensure that its directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

#### RESERVATION OF RIGHTS

16. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

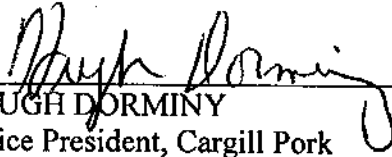
17. This Final Order constitutes a disposition of all claims EPA asserts for civil penalties for the allegations set forth in Paragraph 2 above. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief and monetary penalties.

#### EFFECTIVE DATE

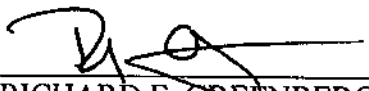
18. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

19. This Final Order shall remain in full force and effect until such time as Respondent pays EPA the civil penalty herein, plus any applicable interest, for non-compliance with this Final Order, that may become due pursuant to the terms set forth above.

FOR CARGILL, INC.


  
HUGH DORMINY  
Vice President, Cargill Pork

2-19-02  
DATE

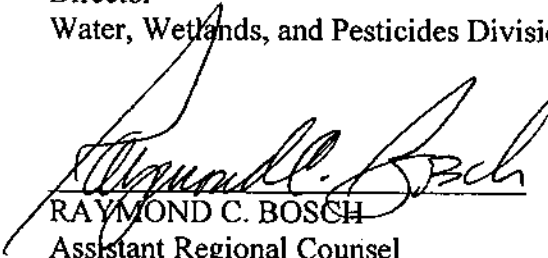
  
RICHARD E. GREENBERG  
Greensfelder, Hemker & Gale, P.C.  
Counsel for Respondent

2/19/02  
DATE

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION VII:

  
U. GALE HUTTON  
Director  
Water, Wetlands, and Pesticides Division

3-5-02  
DATE

  
RAYMOND C. BOSCH  
Assistant Regional Counsel  
Office of Regional Counsel

March 5, 2002  
DATE

IT IS SO ORDERED.

  
ROBERT L. PATRICK  
Regional Judicial Officer

March 11, 2002  
DATE

IN THE MATTER OF Cargill, Inc., Respondent  
Docket No. CWA-07-2002-0093

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Raymond C. Bosch  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by First Class Mail Return Receipt:

Richard E. Greenberg  
Greensfelder, Hemker & Gale, P.C.  
2000 Equitable Building, 10 South Broadway  
St. Louis, Missouri 63102

Dated: 5/6/02

  
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Kathy Robinson  
Regional Hearing Clerk